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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/696,803	10/30/2003	Brent Mussatto	DEI-16602/01	8142
25006	7590	08/12/2005	EXAMINER	
GIFFORD, KRASS, GROH, SPRINKLE & CITKOWSKI, P.C PO BOX 7021 TROY, MI 48007-7021			SORKIN, DAVID L	
			ART UNIT	PAPER NUMBER

1723

DATE MAILED: 08/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/696,803	MUSSATTO, BRENT	
	<b>Examiner</b>	<b>Art Unit</b>	
	David L. Sorkin	1723	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 November 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>2/11 &amp; 11/15/2004</u> . | 6) <input type="checkbox"/> Other: _____  |

5-05

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. On the reference listing of the 11 February 2004 IDS, the entry for document number "01250630" has been crossed off because no copy of the reference has been received. While some information concerning the reference has been received, the reference itself has not been received. Also, the reference is from Italy, not France, and the publication date is April 1995, not July 1991. This reference has not been considered.
2. The sole reference listed on the 15 November 2004 IDS is from China, not Japan, the publication date is May 2002, not June 2001, which is the application date, and the publication number is 24900864Y, not 01249862.9, which is the application number. This reference has been considered.

### ***Claim Rejections - 35 USC §§ 102 and 103***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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5. Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by or in the alternative under 35 U.S.C. 103(a) as being unpatentable over CN 2490086Y. CN 2490086Y discloses an automatic paint stirring apparatus for stirring paint in cans comprising a rack adapted to support at least one can, said rack having at least one can receiving station, each of said at least one can receiving station having an anti-rotation channel (6), a drive member at each of said at least one receiving station, a motor mounted to said rack and drivingly connected to each said drive member, a lid detachably secured across an open top of the can, a stirring assembly having a shaft rotatably mounted around a predetermined axis to said lid, said stirring mechanism having a stirrer (2) secured to said shaft and positioned inside the can and a driven member (4) secured to said shaft and drivingly connected to said stirrer, said driven member extending above an upper surface of said lid (see Fig. 2), an anti-rotation boss (5) secured to and extending upwardly from said upper surface of said lid; and, upon insertion of a can with a secured lid into said at least one receiving station, said drive member drivingly engages said driven member and said anti-rotation boss (5) is positioned in said anti-rotation channel (6) so that coaction between said anti-rotation channel and said anti-rotation boss prevents rotation of said can about said predetermined axis (see Fig. 3 and the English abstract, which is considered to be applicant's statement of relevance of this IDS reference).

6. Claims 1-5 are rejected under 35 U.S.C. 103(a) as obvious over Neri (US 5,096,071). Neri ('071) discloses an automatic paint stirring apparatus for stirring paint in cans comprising a rack adapted to support at least one can (8), said rack having at

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least one can receiving station, each of said at least one can receiving station having an anti-rotation channel (15), a drive member (14) at each of said at least one receiving station, a lid detachably secured across an open to of the can, a stirring assembly having a shaft rotatably mounted around a predetermined axis to said lid, said stirring mechanism having a stirrer secured to said shaft (see col. 1, lines 11-16; col. 3, lines 13-20) and positioned inside the can and a driven member (12) secured to said shaft and drivingly connected to said stirrer, said driven member extending above an upper surface of said lid, an anti-rotation boss (16) secured to and extending upwardly from said upper surface of said lid; and, upon insertion of a can with a secured lid into said at least one receiving station, said drive member drivingly engages said driven member and said anti-rotation boss (16) is positioned in said anti-rotation channel (15) so that coaction between said antirotation channel and said anti-rotation boss prevents rotation of said can about said predetermined axis. While the reference does not expressly use the word "motor", statements that the stirrer is "rotatively driven" (col. 2, line 48) would have strongly suggested a motor to one of ordinary skill in the art.

### ***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David L. Sorkin whose telephone number is 571-272-1148. The examiner can normally be reached on 9:00 -5:30 Mon.-Fri..

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda L. Walker can be reached on 571-272-1151. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David L. Sorkin  
Primary Examiner  
Art Unit 1723

DLS